

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-214988

DATE: September 10, 1984

MATTER OF: Rack Engineering Co.

DIGEST:

1. Contracting officials enjoy a reasonable degree of discretion in determining the acceptability of proposals, and GAO therefore will not substitute its judgment for that of a procuring agency by making an independent determination unless the agency's action is shown to be arbitrary or in violation of procurement statutes or regulations.
2. GAO knows of no legal obligation that compels an agency to test, either before or after an award, a product it reasonably has found technically acceptable merely because an allegation of nonconformity has been raised by an unsuccessful competitor.

Rack Engineering Co. protests the award of a contract to Stanley-Vidmar under request for proposals (RFP) No. N00228-84-R-3048, issued by the Department of the Navy. The procurement is for the acquisition of a pallet stacker system for the Naval Air Rework Facility, Alameda, California. Rack complains that Stanley-Vidmar's proposal was improperly found to be technically acceptable because the upright frame in the Stanley-Vidmar stacker system allegedly fails to meet the maximum weight capacity of 25,000 pounds per individual storage section as required by the solicitation. We deny the protest.

The proposals of Rack and Stanley-Vidmar were both evaluated as being technically acceptable. In response to a request for best and final offers, the firms submitted respective prices of \$131,750.00 and \$111,048.37 for their systems. Award was made to Stanley-Vidmar on the basis of its lower offered price.

Rack alleges that Stanley-Vidmar's system does not meet the requirement of clause 3.4.1 of the RFP that the storage racks have a maximum weight capacity of 25,000 pounds per individual storage section. As support for its allegation, Rack has furnished a report from an independent registered professional engineer which indicates that the upright frame in the Stanley-Vidmar system does not meet the 25,000-pound requirement. According to the report, which we note was not the result of an actual load test, but rather was based upon information and sketches provided by Rack, the Stanley-Vidmar frame will only have a maximum weight capacity of 16,800 pounds if constructed of 36,000 pounds per square inch (psi) yield steel, and a maximum load capacity of 17,300 pounds if constructed of 45,000 psi yield steel. Accordingly, Rack believes that Stanley-Vidmar's proposal should not have been found technically acceptable, and urges that the contract be terminated and a new award made to Rack as the remaining acceptable offeror.

In response to the protest, Stanley-Vidmar had its own engineering consultants perform a load test on its system to demonstrate conformity to the maximum weight capacity requirement. The results of the test basically indicate that the frame does not buckle until a load of 38,000 pounds has been applied.

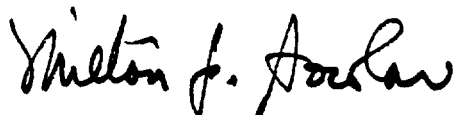
The Navy's response to Rack's protest is that the agency reasonably found Stanley-Vidmar acceptable based on the firm's product literature submitted with its proposal, which states that the storage rack has a maximum weight capacity of "25,000 lbs. per Individual Storage Section; 50,000 lbs. per Bay." The Navy also states that it basically discounts as self-serving the test reports submitted by both firms, and asserts that whether the contractor's supplies actually perform as stated in the literature is a matter for the Navy's concern, not this Office's, as part of its contract administration function.

We find no legal merit to Rack's protest. There is nothing in the record that establishes that the Navy acted unreasonably in relying upon the literature Stanley-Vidmar submitted in determining the technical acceptability of the proposal and in finding that the specification in issue was

met. Contracting officials enjoy a reasonable degree of discretion in the evaluation of proposals for acceptability, and we therefore will not substitute our judgment for that of a procuring agency by making an independent determination unless the agency's action was arbitrary or in violation of procurement statutes and regulations. See Culp/Wesner/Culp, B-212318, Dec. 23, 1983, 84-1 CPD ¶ 17. The only support for Rack's position is a consultant's report based upon data furnished by Rack, not upon the result of an actual load test, and which seemingly is refuted by Stanley-Vidmar's consultant and Stanley-Vidmar's descriptive literature. In our view, this is not sufficient evidence to carry Rack's burden of proving that the Navy acted unreasonably in finding Stanley-Vidmar's offer acceptable. See H. E. Cramer Company, Inc., B-212015.2, Jan. 24, 1984, 84-1 CPD ¶ 111.

Rack also requests that the Navy conduct a load test in order to prove that Stanley-Vidmar's stacker system meets the maximum weight capacity requirement. We are not aware of any procurement statute or regulation, however, that requires that an agency test, either before or after an award, a product it reasonably has found technically acceptable merely because a disappointed offeror alleges nonconformity.

The protest is denied.


for Comptroller General
of the United States